

Atty Dkt. No.: BIOT-008
USSN: 09/834,747

REMARKS

In view of the above amendments and the following remarks, the Examiner is respectfully requested to withdraw the rejections and allow Claims 1-18.

Claim 1 has been amended to specify, in the body of the claim, that the plasma-like solution does not include a conventional biological buffer. Claim 1 has also been amended to recite that the level of CO₂ is reduced by at least about 5 mm Hg. Support for this amendment can be found in the specification, e.g., at page 4, paragraph 13.

Claims 19, 22 and 25 have been cancelled.

The amendments and cancellation of claims were made solely in the interest of expediting prosecution, and are not to be construed as acquiescence to any objection or rejection of any claim and without intent to surrender any subject matter encompassed by the originally filed claims. The applicants expressly reserve the right to pursue any subject matter encompassed by the originally filed claims in one or more continuation and/or divisional applications.

As no new matter has been added by the above amendments, the Applicants respectfully request the entry thereof.

REJECTION UNDER 35 U.S.C. § 112, FIRST PARAGRAPH

The Examiner has rejected Claims 19, 22 and 25 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. Claims 19, 22 and 25 have been cancelled. Accordingly, the Applicants respectfully request that this rejection be withdrawn.

REJECTION UNDER 35 U.S.C. §102(b) / §103(a)

The Examiner has rejected Claims 1-18 under 35 U.S.C. §102(b) as being anticipated by or, in the alternative, under §103(a) as obvious over, Taylor (U.S. Patent No. 5,514,536). The Applicants respectfully submit that the above cited reference does not anticipate Claims 1-18 as amended, nor are Claims 1-18 as amended obvious over the cited reference.

Atty Dkt. No.: BIOT-008
USSN: 09/834,747

The Examiner asserts that the recitation "does not comprise a conventional biological buffer" has not been given patentable weight because the recitation occurs in the preamble. As described above, the recitation that the synthetic plasma-like solution does not include a conventional biological buffer has been included in the body of independent Claim 1.

As noted in the Applicant's previous responses, Taylor does not teach or even suggest a plasma-like solution that does not include a conventional biological buffer. Rather, the invention of Taylor specifically includes a conventional biological buffer (see for example col. 12, lines 12-13). In fact, Taylor specifically employs a conventional biological buffer (IIEPES) specifically described in Applicant's application as a conventional biological buffer not included in the subject invention (see for example page 8, paragraph 25). Accordingly, Taylor does not anticipate nor render obvious Claims 1-18 as Taylor teaches the use of a conventional biological buffer and the claims specifically specify that a conventional biological buffer is not included in the synthetic plasma-like solution.

Furthermore, independent Claim 1 has been amended to specify that the level of CO₂ is reduced by at least about 5 mm Hg. However, nowhere does Taylor teach or even suggest a reduction in the level of CO₂ by at least about 5 mm Hg.

The Examiner asserts that the use of an oxygenator in the invention of Taylor inherently reduces the levels of carbon dioxide. However, even assuming arguendo that the level of CO₂ is reduced by the use of an oxygenator, Taylor still fails to anticipate or suggest the subject claims as Taylor does not specify or suggest that any particular reduction of CO₂ is achieved, let alone a reduction of at least about 5 mm Hg.

Accordingly, for at least the reasons described above (i.e., for at least the reasons that Taylor fails to teach or suggest (1) a synthetic plasma-like solution that does not include a conventional biological buffer, and (2) a reduction in the level of CO₂ by about 5 mm Hg), Taylor does not anticipate or render obvious Claims 1-18. As such, the Applicants respectfully request that this rejection be withdrawn.

The Examiner has rejected Claims 1-25 under 35 U.S.C. §102(b) as being anticipated by or, in the alternative, under §103(a) as obvious over, Segall et al. (U.S. Patent No. 5,702,880) or Segall et al. (U.S. Patent No. 5,571,801). Claims 19-25 have been cancelled. In regards to Claims 1-18, the Applicants respectfully submit that neither of the above cited references anticipates Claims 1-18 as amended, nor are Claims 1-18 as amended obvious over either of the cited references.

Atty Dkt. No.: BIOT-008
USSN: 09/834,747

As described above, independent Claim 1 has been amended to specify that the level of CO₂ is reduced by at least about 5 mm Hg. However, neither cited reference teaches or suggest a reduction in the level of CO₂ by at least about 5 mm Hg.

Specifically, the Examiner asserts that the '801 patent and the '880 patent teach a method of administering a blood substitute wherein the subject is under anesthesia and are hooked up to an oxygenator. The Examiner concludes that the compositions and/or procedures will cause a reduction in CO₂ levels. However, the Applicants respectfully submit that neither reference teaches or suggests that the level of CO₂ is reduced by at least about 5 mm Hg. Analogous to that described for Taylor, assuming arguendo that the compositions and/or procedures of the methods of the '801 patent and the '880 patent will cause a reduction in CO₂ levels, both references still fail to anticipate or suggest the subject claims as they do not specify or suggest that any particular reduction of CO₂ is achieved, let alone a reduction of at least about 5 mm Hg.

Accordingly, for at least the reason described above (i.e., that neither the '801 patent nor the '880 patent teaches or suggests a reduction in the level of CO₂ by about 5 mm Hg), neither the '801 patent nor the '880 patent anticipates nor renders obvious Claims 1-18. As such, the Applicants respectfully request that this rejection be withdrawn.

Atty Dkt. No.: BIOT-008
USSN: 09/834,747

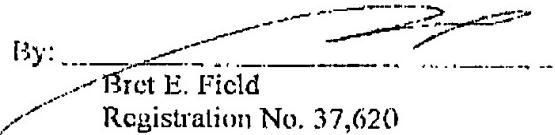
CONCLUSION

In view of the remarks, this application is considered to be in good and proper form for allowance and the Examiner is respectfully requested to pass this application to issue.

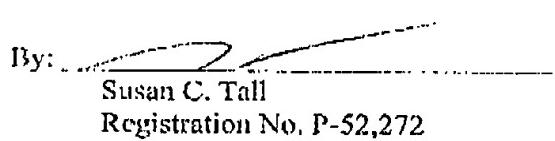
The Commissioner is hereby authorized to charge any fees under 37 C.F.R. §§1.16 and 1.17 which may be required by this paper, or to credit any overpayment, to Deposit Account No. 50-0815, reference no. BIOT-008.

Respectfully submitted,
BOZICEVIC, FIELD & FRANCIS LLP

Date: 12-9-03

By: 
Bret E. Field
Registration No. 37,620

Date: 12/9/03

By: 
Susan C. Tall
Registration No. P-52,272

BOZICEVIC, FIELD & FRANCIS LLP
200 Middlefield Road, Suite 200
Menlo Park, CA 94025
Telephone: (650) 327-3400
Facsimile: (650) 327-3231

P:\DOCUMENT\BIOT (Biotime)\008\resp to oa dated 081203.doc